

Senate Bill No. 383

Passed the Senate September 8, 2015

Secretary of the Senate

Passed the Assembly September 4, 2015

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, add, and repeal Sections 472 and 472a of, and to add and repeal Section 430.41 of, the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 383, Wieckowski. Civil actions: objections to pleadings.

Under existing law, a party in a civil action may object to a complaint, cross-complaint, or answer by demurrer, as specified. Existing law authorizes a party to amend a pleading once without leave of the court at any time before an answer or demurrer is filed, or after a demurrer is filed and before the trial of the issue of law thereon.

This bill would require a demurring party in certain civil actions, before filing the demurrer, to engage in a specified meet and confer process with the party who filed the pleading demurred to for the purpose of determining whether an agreement can be reached as to the filing of an amended pleading that would resolve the objections to be raised in the demurrer. The bill would prohibit a party from amending a complaint or cross-complaint more than 3 times in response to a demurrer filed before the case is at issue, except as specified. The bill would prohibit a party from demurring to a pleading that is amended following a sustained demurrer as to any portion of the amended pleading on grounds that could have been raised by the prior demurrer.

This bill would also authorize a party to amend a pleading after a demurrer is filed but before it is heard by the court if the amended pleading is filed and served before the date for filing an opposition to the demurrer. The bill would authorize a party to amend a pleading after the date for filing an opposition to the demurrer upon stipulation by the parties.

The bill would repeal its provisions on January 1, 2021.

The bill would require a demurring party, in some circumstances, to file a declaration under penalty of perjury. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 430.41 is added to the Code of Civil Procedure, to read:

430.41. (a) Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. If an amended complaint, cross-complaint, or answer is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a demurrer to the amended pleading.

(1) As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies. The party who filed the complaint, cross-complaint, or answer shall provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint, cross-complaint, or answer could be amended to cure any legal insufficiency.

(2) The parties shall meet and confer at least five days before the date the responsive pleading is due. If the parties are not able to meet and confer at least five days prior to the date the responsive pleading is due, the demurring party shall be granted an automatic 30-day extension of time within which to file a responsive pleading, by filing and serving, on or before the date on which a demurrer would be due, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the responsive pleading was previously due, and the demurring party shall not be subject

to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause.

(3) The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

(4) Any determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.

(b) A party demurring to a pleading that has been amended after a demurrer to an earlier version of the pleading was sustained shall not demur to any portion of the amended complaint, cross-complaint, or answer on grounds that could have been raised by demurrer to the earlier version of the complaint, cross-complaint, or answer.

(c) If a court sustains a demurrer to one or more causes of action and grants leave to amend, the court may order a conference of the parties before an amended complaint or cross-complaint or a demurrer to an amended complaint or cross-complaint, may be filed. If a conference is held, the court shall not preclude a party from filing a demurrer and the time to file a demurrer shall not begin until after the conference has concluded. Nothing in this section prohibits the court from ordering a conference on its own motion at any time or prevents a party from requesting that the court order a conference to be held.

(d) This section does not apply to the following civil actions:

(1) An action in which a party not represented by counsel is incarcerated in a local, state, or federal correctional institution.

(2) A proceeding in forcible entry, forcible detainer, or unlawful detainer.

(e) (1) In response to a demurrer and prior to the case being at issue, a complaint or cross-complaint shall not be amended more than three times, absent an offer to the trial court as to such additional facts to be pleaded that there is a reasonable possibility the defect can be cured to state a cause of action. The

three-amendment limit shall not include an amendment made without leave of the court pursuant to Section 472, provided the amendment is made before a demurrer to the original complaint or cross-complaint is filed.

(2) Nothing in this section affects the rights of a party to amend its pleading or respond to an amended pleading after the case is at issue.

(f) Nothing in this section affects appellate review or the rights of a party pursuant to Section 430.80.

(g) If a demurrer is overruled as to a cause of action and that cause of action is not further amended, the demurring party preserves its right to appeal after final judgment without filing a further demurrer.

(h) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 2. Section 472 of the Code of Civil Procedure is amended to read:

472. (a) A party may amend its pleading once without leave of the court at any time before the answer or demurrer is filed, or after a demurrer is filed but before the demurrer is heard if the amended complaint, cross-complaint, or answer is filed and served no later than the date for filing an opposition to the demurrer. A party may amend the complaint, cross-complaint, or answer after the date for filing an opposition to the demurrer, upon stipulation by the parties. The time for responding to an amended pleading shall be computed from the date of service of the amended pleading.

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 3. Section 472 is added to the Code of Civil Procedure, to read:

472. (a) Any pleading may be amended once by the party of course, and without costs, at any time before the answer or demurrer is filed, or after demurrer and before the trial of the issue of law thereon, by filing the same as amended and serving a copy on the adverse party, and the time in which the adverse party must respond thereto shall be computed from the date of notice of the amendment.

(b) This section shall become operative on January 1, 2021.

SEC. 4. Section 472a of the Code of Civil Procedure is amended to read:

472a. (a) A demurrer is not waived by an answer filed at the same time.

(b) Except as otherwise provided by rule adopted by the Judicial Council, if a demurrer to a complaint or to a cross-complaint is overruled and there is no answer filed, the court shall allow an answer to be filed upon such terms as may be just. If a demurrer to the answer is overruled, the action shall proceed as if no demurrer had been interposed, and the facts alleged in the answer shall be considered as denied to the extent mentioned in Section 431.20.

(c) Subject to the limitations imposed by subdivision (e) of Section 430.41, if a demurrer is sustained, the court may grant leave to amend the pleading upon any terms as may be just and shall fix the time within which the amendment or amended pleading shall be filed. If a demurrer is stricken pursuant to Section 436 and there is no answer filed, the court shall allow an answer to be filed on terms that are just.

(d) If a motion to strike is granted pursuant to Section 436, the court may order that an amendment or amended pleading be filed upon terms it deems proper. If a motion to strike a complaint or cross-complaint, or portion thereof, is denied, the court shall allow the party filing the motion to strike to file an answer.

(e) If a motion to dismiss an action pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8 is denied, the court shall allow a pleading to be filed.

(f) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 5. Section 472a is added to the Code of Civil Procedure, to read:

472a. (a) A demurrer is not waived by an answer filed at the same time.

(b) Except as otherwise provided by rule adopted by the Judicial Council, if a demurrer to a complaint or to a cross-complaint is overruled and there is no answer filed, the court shall allow an answer to be filed upon such terms as may be just. If a demurrer to the answer is overruled, the action shall proceed as if no

demurrer had been interposed, and the facts alleged in the answer shall be considered as denied to the extent mentioned in Section 431.20.

(c) Subject to the limitations imposed by subdivision (e) of Section 430.41, if a demurrer is sustained, the court may grant leave to amend the pleading upon any terms as may be just and shall fix the time within which the amendment or amended pleading shall be filed. If a demurrer is stricken pursuant to Section 436 and there is no answer filed, the court shall allow an answer to be filed on terms that are just.

(d) If a motion to strike is granted pursuant to Section 436, the court may order that an amendment or amended pleading be filed upon terms it deems proper. If a motion to strike a complaint or cross-complaint, or portion thereof, is denied, the court shall allow the party filing the motion to strike to file an answer.

(e) If a motion to dismiss an action pursuant to Article 2 (commencing with Section 583.210) of Chapter 1.5 of Title 8 is denied, the court shall allow a pleading to be filed.

(f) This section shall become operative on January 1, 2021.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2015

Governor